

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

RENEE GALLOWAY, et al,

plaintiffs,

versus 3:18CV406

BIG PICTURE LOANS, LLC, et al,

defendants,

and

LULA WILLIAMS, et al,

plaintiffs

versus 3:17CV461

BIG PICTURE LOANS, LLC, et al,

defendants

Before: HONORABLE ROBERT E. PAYNE
Senior United States District Judge

MOTIONS HEARING

October 18, 2024

Richmond, Virginia

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

KELLY, GUZZO, PLC
by: Kristi Cahoon Kelly, Esq.
Drew David Sarrett, Esq.
for the Plaintiffs

SANDS ANDERSON
by: Cullen Seltzer, Esq.
LOEB & LOEB
by: John D. Taliaferro, Esq.
BROPHY & BLAND
by: Charlie Bland, Esq.
for Matt Martorello

JACKSON LEWIS
by: William Jackson, Esq.
for Rebecca Martorello

1 THE CLERK: Case number 3:18 CV 406 Renee
2 Galloway, et al versus Big Picture Loans, LLC, et
3 al.

4 Case 3:17 CV 461. Lula Williams, et al versus
5 Big Picture Loan, LLC, et al.

6 The plaintiffs are represented by Kristi Kelly
7 and Drew Sarrett.

8 The defendant Matt Martorello is represented by
9 John Taliaferro, Cullen Seltzer, Charlie Bland.

10 Defendant Rebecca Martorello is represented by
11 Billy Jackson.

12 Are counsel ready to proceed?

13 MS KELLY: Plaintiffs are.

14 MR. JACKSON: Ms Martorello is, Your Honor.

15 MR BLAND: Mr. Martorello is, Your Honor.

16 THE COURT: Mr. Martorello is not here?

17 MR BLAND: Mr. Martorello is not here today.

18 THE COURT: Ms Martorello is here.

19 MR. JACKSON: She is here, Your Honor.

20 THE COURT: All right.

21 Well, as I understand it, the structural basis
22 for the proposed settlement, which was to have a
23 final approval hearing on soon, has collapsed.

24 And there is a pending bankruptcy for Mr.
25 Martorello.

1 The final approval is set for October the 28th.

2 Did notices and so forth go out? Where do we
3 stand on all that? That is the first thing is how
4 to deal with that issue in view of the fact that the
5 predicates for approval as specified in the
6 agreement and the order have not and will not occur
7 at least in the order, in the time frame that they
8 are to occur based on the documents.

9 So where do we stand on the settlement approval
10 hearing on October 28th?

11 MS KELLY: Judge, Kristi Kelly on behalf of the
12 plaintiff in the class. So to answer Your Honor's
13 question, notice was sent out. We provided a
14 declaration about the notice process when we filed
15 our paper work in support of final approval of the
16 settlement.

17 THE COURT: When did the notice go out?

18 MS KELLY: It went out, I believe it was over
19 the summer. And the deadlines to opt out and object
20 have passed. Class members were notified. My
21 office and and my co-counsel's office have been in
22 communication with the class members providing them
23 their estimated the settlement proceeds.

24 THE COURT: Were there any opt outs?

25 MS KELLY: There were some opt outs, Judge.

1 Hold on a second.

2 THE COURT: When was the notice issued?

3 MS KELLY: I believe it was issued the --

4 THE COURT: Get to work over there, Mr.

5 Sarrett, and look it up while she is talking.

6 MR. SARRETT: I am looking it up, Your Honor.

7 THE COURT: Thank you.

8 MS KELLY: It was in June or July, Judge. But

9 I am not sure of the exact --

10 THE COURT: How many opt outs were there, and
11 when were they filed?

12 You can look that up.

13 Go ahead with your presentation.

14 MS KELLY: Judge, if Your Honor --

15 THE COURT: Were objections filed?

16 MS KELLY: There was one objection that was
17 filed. We filed a response to that objection this
18 Monday. I have personally spoken with the objector.
19 And I can represent to The Court that his main gripe
20 is that Big Picture withdrew funds from his account
21 and has an issue with his bank and Big Picture, but
22 he also would like to obtain more money from the
23 settlement. So that is his objection position, but
24 we did file our response to the objection on Monday.

25 THE COURT: All right.

1 MS KELLY: So, Judge, in the settlement
2 agreement, as you may be aware the parties were with
3 Judge Colombell yesterday --

4 THE COURT: Yes.

5 MS KELLY: -- to try to work through issues
6 relating to the lack of any non-binding indications
7 of interest that were received to purchase the
8 shares. And we spent at least a few hours with
9 Judge Colombell trying to work through issues so
10 that we could jointly propose an extension of time
11 to see if there would be a way for the shares to be
12 sold so that these class members can get paid.

13 I can represent to Your Honor that the
14 plaintiff believes a brief extension is appropriate,
15 but we were not able to agree to certain conditions
16 for that extension. But we do believe --

17 THE COURT: Extension for what?

18 MS KELLY: To receive any bids from [REDACTED].

19 THE COURT: Do what?

20 MS KELLY: Pardon?

21 THE COURT: Brief extension to do what?

22 MS KELLY: To receive any bids for the shares
23 of [REDACTED]. We believe that the best chances of
24 getting this case resolved is to have a brief
25 extension of time to get a bid so that there are

1 funds to pay these class members.

2 THE COURT: What reason is there to believe
3 that anybody will submit a bid, given that they have
4 had all this time to submit a bid and nobody
5 submitted a bid?

6 What reason is there to believe that that is a
7 viable course of action?

8 Excuse me a minute.

9 One moment. All right. Go ahead. I don't
10 understand the reason why we have any hope that this
11 process will do anything if given more time to
12 mature. So I would like to understand that.
13 Because there are alternative resolution ways to
14 resolve this case moving forward. To begin with,
15 there are pending motions to repatriate assets that
16 are ripe and ready to be dealt with.

17 MS KELLY: Judge --

18 THE COURT: I believe that I asked you all to
19 research, and you can check and see that there is
20 some authority that notwithstanding the pendency of
21 the bankruptcy considering that these assets are not
22 in the hands of the person who is taking bankruptcy,
23 that The Court can go forward with the repatriation
24 process.

25 There is also the alternative of communicating

1 with the bankruptcy court. And it is not unheard of
2 that where an antecedent case is pending and it has
3 reached a place where it can be dealt with at a
4 reasonable way, that the bankruptcy court will take
5 that matter as an adversary proceeding and it will
6 proceed in the court where it is pending.

7 Ordinarily the proper way to deal with that is
8 for me to communicate, or for all you to tell me if
9 you are interested in that, and for me to
10 communicate with the bankruptcy judge, for I do not
11 wish to intrude upon the jurisdiction of the
12 bankruptcy court. But it is not at all unusual for
13 federal courts in the district and the bankruptcy
14 courts to work together where there is a common --
15 where it makes sense efficiently to do so even
16 though they are not in the same district.

17 That is not unusual, and it has been done
18 before. But I am interested in getting things
19 moving.

20 MS KELLY: Judge, and I as class counsel I
21 completely agree and that is what we want. I would
22 propose this, Judge, if you can hear out what class
23 counsel thinks would be the best course of action.

24 We do agree that Mr. Martorello's filing of
25 bankruptcy in the middle of this process was a death

1 knell for the sale of the [REDACTED] shares, because
2 he is --

3 THE COURT: It had to be.

4 MS KELLY: He is the founder of this company.

5 THE COURT: He is going to buy it.

6 MS KELLY: Yes, he is the founder of this
7 company for which we are trying to sell shares to
8 resolve this case. And any prudent buyer is going
9 to think twice about buying a company where the
10 founder is bankrupt, right?

11 THE COURT: I wouldn't think they would think
12 twice. I think they would think once, and that
13 would be the end of it.

14 MS KELLY: So it was a real surprise, shock,
15 and it was very disheartening for plaintiffs'
16 counsel to see about the filing and learn about it
17 through ECF. And it caused a lot of concern for us
18 about the viability of moving forward.

19 With that being said --

20 THE COURT: I have an interest in that topic
21 that I believe needs to get pursued as part of the
22 agenda.

23 This Court was invited to do certain things
24 with the knowledge of Mr. Martorello. At the time
25 it seems to me nobody mentioned to me the

1 possibility that Mr. Martorello would take
2 bankruptcy, and in so doing render most unlikely, if
3 not an utter nullity, the likelihood of implementing
4 what people in the public were told had the
5 imprimatur of a District Court as a logical way to
6 do things on the premise and assumption that it
7 would not be frustrated by any bankruptcy. To begin
8 with, there is a question about when these
9 discussions about Mr. Martorello's bankruptcy ever
10 began, and whether this Court has been induced to
11 act improperly, or inappropriately by virtue of
12 circumstances that are highly suspect, particularly
13 given Mr. Martorello's conduct in this case and the
14 fact that he has been adjudicated to be untruthful
15 and confirmed as an untruthful person by the Fourth
16 Circuit. So The Court has an interest in
17 ascertaining exactly how that bankruptcy came to
18 pass in perspective of the timing of it. It may be
19 that it is utterly innocent, and circumstances
20 entirely arose after the -- after the settlement.
21 The Court was told to, and advised to issue orders
22 in the settlement of the case, and that there wasn't
23 anything inappropriate at all. But it is also
24 somewhat suspicious under the circumstances.

25 MS KELLY: Judge --

1 THE COURT: So, I need to hear from you all
2 about what you all know about that.

3 MS KELLY: So, yes. So plaintiffs' counsel,
4 class counsel were totally in the dark. We had
5 communication and ZOOM calls with Mr. Martorello's
6 counsel and Judge Colombell on at least two
7 occasions, two occasions that week that he filed for
8 bankruptcy. It was never once mentioned to us that
9 he intended to file for bankruptcy. Judge, I think
10 that there is a lot of things that --

11 THE COURT: When was the bankruptcy filing made
12 in respect to the filing of the motion in this case
13 upon their approval? Number 648 was filed May 21,
14 2024. When was the bankruptcy filing?

15 MS KELLY: It was filed on September 20th.

16 THE COURT: All right.

17 MS KELLY: Which is just one month --

18 THE COURT: And a motion for final approval was
19 filed on October 1 --

20 MS KELLY: That's right.

21 THE COURT: -- of 2024.

22 MS KELLY: Judge --

23 THE COURT: All right.

24 MS KELLY: -- I want to first try to offer a
25 productive compromise for the class, and then I have

1 some, class counsel has some suggestions on what we
2 think would be an appropriate path forward if Your
3 Honor is willing to --

4 THE COURT: That is why I asked you to be here.

5 MS KELLY: Okay.

6 So, we think that a brief time frame to see if
7 any bids will come in is appropriate because that
8 will also give us time to file motions in the
9 bankruptcy case to lift the stay so that Your Honor
10 can decide the pending motions as to Mr. Martorello
11 since they were properly filed before this court if
12 a settlement does not go through. We also intend to
13 file a motion to confirm that the RICO judgment
14 would not be discharged pursuant to Mr. Martorello's
15 bankruptcy filing. There is ample case law to
16 suggest that RICO conduct is non dischargeable. It
17 is considered like mail and wire fraud are regularly
18 considered false pretenses, and that is a non
19 dischargeable course of conduct under the bankruptcy
20 code. So we intend to get that on file right away
21 during this time frame. And also seek to lift the
22 stay so that this Court can have the jurisdiction to
23 decide those motions. The other --

24 THE COURT: This Court as the jurisdiction.

25 MS KELLY: That's correct. Sorry, Judge.

1 THE COURT: But the jurisdiction, the exercise
2 of that jurisdiction is stayed under the bankruptcy
3 authorities. And you are saying you don't think
4 that there is any independent authority to proceed
5 without the approval of the bankruptcy court. So
6 you want time to file before the bankruptcy court?

7 MS KELLY: We are not -- we don't, we do not
8 contented that, Judge, because as you properly
9 noted, Mr. Martorello has said, none of these assets
10 that we are seeking are his. They are not listed in
11 his schedule. They are not anywhere in his
12 bankruptcy filing. And so the assets that we are
13 seeking to repatriate, the fraudulent transfer that
14 we are seeking to avoid, are not listed in Mr.
15 Martorello's schedules, so as far as we are
16 concerned it shouldn't be a problem for us to
17 proceed.

18 But, we do think it would be prudent to seek to
19 lift the stay with that in mind so that there is no
20 excess motions practice by the defendant in this
21 case.

22 Because we just think that would be the most
23 prudent practice. We don't disagree that none of
24 these assets are listed on his schedule or are
25 claimed in statements under penalty of perjury to be

1 Mr. Martorello's.

2 Additionally --

3 THE COURT: What about the assets that are the
4 subject of ECF number 1409, plaintiff's motion to
5 repatriate foreign assets in 3:17 461 and the
6 supplemental briefing in that case about the
7 proposed asset freeze order, 1456 dash one. And
8 statement of position about known transfers made
9 during the pendency of the case, 1454?

10 MS KELLY: Yes, Judge, and also docket 1491,
11 that is plaintiffs' motion to set aside all
12 transfers and conveyances.

13 THE COURT: 1491?

14 MS KELLY: Yes. Yes, Judge.

15 That is a motion that plaintiffs believe we
16 could file in the Galloway matter as to Ms
17 Martorello because she received certain transfers.

18 THE COURT: 1491 in what case?

19 MS KELLY: It is in the same case, Judge. It
20 is in Williams.

21 THE COURT: Seventeen CV 461?

22 MS KELLY: Correct.

23 THE COURT: Okay. You filed that?

24 MS KELLY: It is not filed in another case, it
25 is just filed in 3:17 461 right now.

1 THE COURT: Which you are going to file?

2 MS KELLY: We certainly can file it next week
3 if we needed to in the case where Ms Martorello is
4 because a lot of those transfers --

5 THE COURT: Where is that case? Is that --

6 MS KELLY: Sorry, Judge. That is 3:19 CV 314,
7 I believe.

8 THE COURT: That is commonly referred to as
9 Galloway what?

10 MS KELLY: It is Galloway versus Justin
11 Martorello.

12 THE COURT: Is Ms Martorello a defendant in
13 that case?

14 MS KELLY: Yes, Judge.

15 THE COURT: Okay. You are going to file that
16 motion, number 1491, in 17 461. You are going to
17 file that in 3:19 CV 314?

18 MS KELLY: Yes. But we would like to wait to
19 file the motion until after a brief extension of the
20 settlement agreement because I can represent that Ms
21 Martorello has been here, she has been engaged in
22 trying to get something done. And she is willing to
23 come and attend another settlement conference on
24 November 14 with Judge Colombell.

25 THE COURT: Does she have any authority to do

1 that without Mr. Martorello?

2 MS KELLY: Well, Judge, I think --

3 THE COURT: I accept your representation that
4 she is proceeding in good faith, but even people
5 proceeding in good faith have limitations depending
6 upon extrinsic circumstances. It may well be that
7 the extrinsic circumstances here may be based on the
8 information accumulated in this case over several
9 years, these cases, need Mr. Martorello himself. We
10 don't have any indication that he is interested in
11 being here and helping try to settle the case or
12 solve the problems --

13 MS KELLY: But --

14 THE COURT: -- or not?

15 MS KELLY: You know, I will say that
16 Mr. Martorello's proposal to participate in the
17 subsequent settlement conference is unacceptable to
18 plaintiff. That is all I will say, because it was
19 part of a settlement communication.

20 However, I believe, Your Honor has authority to
21 order the trustee, the current trustee of the
22 [REDACTED] shares to participate in an in-person
23 settlement conference on November 13th.

24 That trustee --

25 THE COURT: Is that person represented here

1 today?

2 MS KELLY: He is not. But he is --

3 THE COURT: Who represents that person?

4 MS KELLY: It is my understanding he does not
5 have counsel. But he is a business partner, former
6 business partner, of Mr. Martorello. He was a -- he
7 founded a company with Mr. Martorello that is
8 actually listed in our ECF 1454 regarding the
9 unlawful asset transfers we have identified called
10 Green Tea Technology. But in the settlement
11 agreement, and in section --

12 THE COURT: What page?

13 MS KELLY: Three point five. It is at ECF, The
14 Court document, 653 dash one in 3:19 CV 314.

15 THE COURT: Settlement agreement is 652 dash
16 one. Paragraph is what?

17 MS KELLY: It is three point five. It is page
18 15 of 71.

19 THE COURT: All right.

20 Where are you reading from? In what paragraph?

21 MS KELLY: It is three pinot five, called
22 trustee engagement. If you go down into the middle
23 of the page, subsection three.

24 It is actually not sub, it is number three.

25 THE COURT: I have a 652 dash one, page 13

1 paragraph five, trustee engagement. Now, where do
2 you want me to go?

3 MS KELLY: Do you see where there is a section
4 three?

5 THE COURT: I see there is a subparagraph
6 parentheses one, two, and three. And three --
7 actually --

8 MS KELLY: Sorry.

9 THE COURT: The trustees consent to participate
10 in monthly updates with Judge Colombell. Is that
11 what you are talking about?

12 MS KELLY: Yes.

13 Today neither Judge Colombell nor plaintiffs'
14 counsel have heard from the trustee at all regarding
15 any monthly updates. So we believe that the trustee
16 consented and agreed to this provision, and could be
17 required to participate in the in-person update
18 slash settlement conference with Judge Colombell on
19 November 13, because it is my understanding that the
20 Martorellos believe it is the trustee who has the
21 discretion to determine whether to accept, and what
22 terms to settle for with the shares of [REDACTED].

23 THE COURT: Where did that come out? Not in
24 anything in the papers that I have.

25 MS KELLY: The trustee's position --

1 THE COURT: I thought you said it was the
2 Martorello's position.

3 MS KELLY: Right. Judge, that is more of a
4 settlement communication.

5 THE COURT: Not in any papers I have.

6 MS KELLY: That's correct, Judge.

7 THE COURT: All right.

8 MS KELLY: But it is plaintiffs' counsel belief
9 that is an impediment to getting this deal over the
10 finish line because the trustee has not participated
11 in any manner so far in the settlement --

12 THE COURT: The trustee is who?

13 MS KELLY: He is one of Mr. Martorello --

14 THE COURT: What is the name?

15 MS KELLY: Anthony Tassone.

16 THE COURT: How do you spell that?

17 MS KELLY: Sorry. I don't want to get it
18 wrong. T-A-S-S-O-N-E.

19 THE COURT: All right.

20 MS KELLY: Mr. Sarrett has pointed out that in
21 the bankruptcy filing Mr. Martorello has asserted
22 that he does not control the trust, nor is he the
23 beneficiary, and that he is owed money pursuant to
24 the transfer of shares. So he is agreeing that he
25 has no control over the trust or the trustee in that

1 statement in the bankruptcy court.

2 THE COURT: Let's see.

3 So how do you spell this fellow's name?

4 MS KELLY: T-A-S-S-O-N-E.

5 THE COURT: Where is Mr. Tassone?

6 MS KELLY: I believe in Chicago. But am not
7 just not a hundred percent sure.

8 THE COURT: What do you want me to do with him?

9 Don't tell me that they have all of these
10 millions of dollars in the trust and nobody knows
11 who the trustee is or where he is. That somebody
12 knows that. One of the people who would know, I
13 would think, would be a beneficiary because under
14 most trusts the trustee has to make reports
15 regularly to beneficiaries. So some -- who are
16 beneficiaries?

17 MS KELLY: So, it is my understanding that
18 initially the beneficiaries were Ms Martorello and
19 her children. And then, of course, during the
20 pendency of this litigation there was a subsequent
21 transfer to the trust where Mr. Tassone is trustee.
22 And I believe those trusts, the beneficiaries are
23 just the children. But I am not a hundred percent
24 sure. Perhaps Mr. Jackson can speak to that and the
25 knowledge of the trustee.

1 THE COURT: I am sure Ms Martorello knows who
2 is the trustee for her children.

3 MS KELLY: Probably she will know where he
4 lives.

5 THE COURT: Do you have documents by which the
6 trust changed from Ms Martorello to the trustee, to
7 the [REDACTED] trust?

8 MS KELLY: Yes. It was a Wyoming company that
9 was created. I don't know if Mr. Jackson or if
10 anyone from the defense --

11 THE COURT: The transactions in this case are
12 not unlike those in the John Gresham novel The Firm.

13 MS KELLY: So we know the trust names are BB&T
14 I and BB&T II. And it is my understanding that the
15 children are the beneficiaries. But I don't know
16 that we have received all of those documents in
17 discovery. We just know --

18 THE COURT: What all? What documents?

19 MS KELLY: The creation of the, the trust
20 creation documents and the transfer.

21 THE COURT: Have you asked for them?

22 MS KELLY: Yes, we have. But, I think --

23 THE COURT: In one of these cases?

24 MS KELLY: It was in the post judgment
25 collection action in Williams. I just don't

1 remember actually seeing it. I might have, but
2 there have been a lot of them, but I just don't one
3 hundred percents remember that.

4 THE COURT: If you want me to order somebody to
5 attend somewhere I have to know who they are, where
6 they are, and how to get jurisdiction over them.

7 MS KELLY: Well, he signed a consent to agree
8 to participate in these updates pursuant to this
9 agreement. And we have his consent signed as a
10 condition of moving forward with the settlement. So
11 we could --

12 THE COURT: Well, you could file a motion that
13 precipitates all this and get the relevant
14 information.

15 MS KELLY: We will do that, Judge.

16 THE COURT: How long do you want to proceed,
17 or -- then you have to file -- you have to -- you
18 tell me you are going to file a motion to lift the
19 stay as to the various motions here, 1491, 14 --

20 MS KELLY: That motion has already been --

21 THE COURT: -- 09. And another one, the one I
22 just mentioned. And that would be, those
23 supplemental briefs filed -- there were several
24 motions about repatriation and assets. You are
25 going to file those? And then you are going to file

1 a motion in the bankruptcy court to do what about
2 the RICO charge?

3 MS KELLY: There would be, we are still
4 conferring with our local counsel there as to
5 whether it is just a motion. But we believe it
6 might be like an adversary proceeding or declaratory
7 judgment proceeding to confirm that the RICO
8 judgment is not a judgment that can be discharged.
9 And we believe there is --

10 THE COURT: Would that be something that you
11 would be asking the bankruptcy court there to have
12 this court determine or the bankruptcy court?

13 MS KELLY: That would be in the bankruptcy
14 court for the bankruptcy court to determine.

15 But certainly this court has already made
16 numerous findings that we believe Mr. Martorello
17 would be bound by that would clearly meet any
18 threshold necessary to make the necessary findings
19 in that action. And we don't see how those facts
20 can be changed at this point by Mr. Martorello.

21 THE COURT: So what date do you want me to
22 extend out of what document, so I can know what
23 order to enter?

24 MS KELLY: Judge, the plaintiff would agree to
25 extend the settlement agreement compliance deadline.

1 THE COURT: Which deadline is that? What page
2 of the settlement agreement am I amending? That is
3 in settlement agreement 652 dash one in 3:19 314.
4 So I have that in front of me.

5 MS KELLY: The deadline that we are seeking to
6 extend is the funding deadline of October 21st,
7 2024.

8 THE COURT: Let's have the paragraph that we
9 are talking about. I have 652 dash 1 in front of
10 me.

11 MS KELLY: It is 3.7, liquidation of interest
12 in [REDACTED].

13 THE COURT: Just a moment.

14 All right. It says it must be completed, the
15 liquidation of the interests must be completed by no
16 later than October 21, 2024. Is that the date you
17 want continued?

18 MS KELLY: Yes, Judge. That is the date that
19 we would like continued.

20 THE COURT: Have you talked with other counsel,
21 and do they all agree with that?

22 MR. JACKSON: Your Honor, Billy Jackson for
23 Rebecca Martorello. We agree with that extension
24 with that date.

25 THE COURT: To what date?

1 MR. JACKSON: To November 13, which is the, I
2 think one of the only days Judge Colombell is
3 available. I can't speak for Mr. Martorello.

4 THE COURT: You are not his counsel.

5 MR. JACKSON: That is right.

6 THE COURT: Well, that would be a venture I
7 wouldn't undertake either. All right. But his
8 counsel is here.

9 So, does he agree?

10 MR. BLAND: Charlie Bland here for Mr.
11 Martorello, Your Honor.

12 THE COURT: Yes, sir.

13 MR. BLAND: Mr. Martorello would agree. Let my
14 back up, Your Honor. Mr. Martorello would agree to
15 a brief extension on that deadline as that is the
16 best opportunity to fully fund the settlement and to
17 reach a final resolution.

18 Now, Mr. Martorello's bankruptcy estate has
19 bankruptcy counsel. That is Mr. Dan Winikka.

20 THE COURT: Who?

21 MR. BLAND: Mr. Dan Winikka, Your Honor. That
22 is Mr. Martorello's bankruptcy estate's lawyer.

23 THE COURT: They were invited to be here, I
24 think, and they chose not to be.

25 MR. BLAND: Yes, Your Honor.

1 THE COURT: So what point do you make?

2 MR. BLAND: That Mr. Martorello and Mr. Winikka
3 will consent to a meeting here with Judge Colombell
4 provided that we, [REDACTED] receives a bid that is
5 sufficient to fully fund the settlement agreement.
6 In an amount that is sufficient to plaintiffs'
7 counsel and to the plaintiffs' class. If that is
8 the case, Mr. Martorello and Mr. Winikka are willing
9 to come here to Virginia to fully consummate the
10 deal.

11 THE COURT: What do you need to do to
12 consummate the deal?

13 MR. BLAND: Your Honor, the idea is to be here
14 together to work through any issues that arise in
15 connection with the bankruptcy, and do so with Judge
16 Colombell.

17 THE COURT: All right.

18 So that is what Martorello agrees to?

19 MR. BLAND: Yes, Your Honor.

20 THE COURT: And anybody else got a dog in the
21 fight that I need to talk to?

22 MR. TALIAFERRO: Mr. Taliaferro, Your Honor,
23 Mr. Martorello's counsel in the 18 465, I don't have
24 anything to add beyond what Mr. Bland said.

25 THE COURT: All right.

1 Anything else from you? Mr. Seltzer?

2 MR. SELTZER: No, sir, Judge.

3 THE COURT: You are counsel in what case?

4 MR. SELTZER: Judge, in the Williams matter. I
5 am local counsel for Mr. Bland.

6 THE COURT: So the record is clear, that's all.

7 Do you object to that that condition? You said
8 something earlier?

9 MS KELLY: Yes, Judge, the condition that
10 Mr. Martorello will only participate if we agree to
11 whatever amount the shares get, even if it is less
12 than the \$65 million number. But we are --

13 THE COURT: I didn't hear him say that. I
14 thought he said sufficient to fund the settlement.

15 MS KELLY: So it would have --

16 THE COURT: To fund the settlement would be the
17 amount as appears in the settlement agreement I
18 interpreted. Now, if I misunderstood that, I need
19 to be straightened out on that.

20 MS KELLY: So Mr. Martorello's position is we
21 would only have a settlement conference if there was
22 an offer for at least \$65 million. For 50 percent.
23 But, there could be an offer for 80 percent of the
24 shares at 90 million, and that may only net 63
25 million dollars. And in that case Mr. Martorello

1 wouldn't participate. So to us, you know, if we
2 satisfy the terms of the settlement there is really
3 not much that would need to be done on November 13th
4 because we are almost there. And we could simply
5 have a ZOOM call with Judge Colombell.

6 THE COURT: But he said, I thought, that he,
7 Mr. Martorello and Winikka would meet if [REDACTED]
8 gets a bid sufficient to fund the settlement. That
9 is what he just said. He didn't say anything
10 about -- he just said the ultimate amount of the
11 settlement. So if he got offers of what percent you
12 said, eighty percent that is funded it at 65 million
13 they would be here.

14 MS KELLY: Well, if that is their
15 position then --

16 THE COURT: That is what I understood him to
17 say.

18 MS KELLY: Then I misunderstood him.

19 THE COURT: Did I misunderstand you or not?

20 MR. BLAND: Your Honor, that is correct. There
21 is a fifty percent cap, Your Honor. That was an
22 economic material term of the settlement agreement.

23 THE COURT: I guess I have this question.

24 What is the machination going on here that I
25 see that if you get an offer of some kind you don't

1 want to come talk about it? That is what I think I
2 am having difficulty understanding. It bespeaks a
3 certain amount of confusion in my mind, and I
4 would like to have it clarified so I understand what
5 the dog in the fight is all about.

6 MR. BLAND: Your Honor, I understand. That is
7 the instruction that I have been given both by
8 Mr. Martorello and his bankruptcy counsel.

9 THE COURT: Did you ask them why they were
10 taking that position?

11 MR. BLAND: No, Your Honor. This developed
12 this morning. The Court should be aware as a result
13 of the bankruptcy filing automatic stay my
14 authorization is limited. I want to be as helpful
15 and as candid as I can, consistent with being a way
16 that I make sure that I don't violate the rights of
17 the bankruptcy and the automatic stay. So that is
18 an instruction that I have been given by
19 Mr. Martorello.

20 THE COURT: I am coming to the conclusion
21 rather quickly that the conduct of Mr. Martorello
22 and his bankruptcy counsel are standing as an
23 obstruction to justice and the administration of
24 justice in this court. And that they need to come
25 to reality. And there is nothing -- they don't

1 forfeit anything by agreeing to come to talk about
2 something, that I know of. It is a -- seems to me
3 to be a position that you can't explain, and I can't
4 understand, but that makes no sense to me when it is
5 presented as a -- in the fashion that operates as an
6 impediment to the resolution of a pending matter in
7 the court and has a consequence to it. And that
8 consequence is the obstruction of the process. If
9 there is a legitimate reason why they don't want to
10 be here I can understand that. But I don't
11 understand it, and you haven't been able to express
12 it, and I gather that you are not authorized and
13 don't feel comfortable in your representation of Mr.
14 Martorello to speak that way. I understand that is
15 a position that you have, and I respect that. But
16 that doesn't change the fact that Mr. Martorello and
17 Mr. Winikka are acting in the way they are acting.

18 So it doesn't make any sense to me. If I had
19 some understanding of why it was the way it was I
20 perhaps could deal with it in a different way.

21 But right now, I am of the view that this is
22 conduct that is not appropriately engaged in that is
23 standing in the way of resolving the matter.

24 So what do you want to do if they, Ms Kelly,
25 want to -- don't want to come unless the fifty

1 percent threshold is also established?

2 MS KELLY: I think --

3 THE COURT: Do you want to go forward with the
4 people, with the [REDACTED] people and with Ms
5 Martorello, or not?

6 MS KELLY: Judge, I think we do. If
7 Mr. Jackson and Ms Martorello have been clear that
8 they want to see this through and they want to get
9 it done despite Mr. Martorello's conduct. And we
10 believe them, that they want to get it done. And we
11 think it is in the best interests of everyone to
12 give it that time to try to get it done. We are
13 incredibly disappointed with Mr. Martorello's
14 conduct. It is shocking and unbelievable to us.
15 But it is actually not shocking. I shouldn't say
16 that, because, you know, we should know better by
17 now. But we want to get the money for the class
18 members. They are happy about it, they are
19 grateful. They have expressed to us how much it
20 would mean to them and their families.

21 THE COURT: I understand that. But that is,
22 the feelings of desire of joy are not what is on the
23 table now. It is the process of figuring out how to
24 penetrate an apparently impenetrable wealth wall,
25 and breaking down the matter so that it can in fact

1 proceed in a court of law. That is what we are
2 looking for. If they don't to settle it, that is
3 their business. We can't do anything about that.
4 But we can adjudicate. The interposition of the,
5 unexpected interposition of the bankruptcy of
6 Mr. Martorello is a very unusual circumstance
7 because it is being used to stand in the way of
8 assets, obtaining assets that he doesn't have any
9 control over and has eschewed any responsibility
10 for. That can't be allowed to continue. So we need
11 to move forward on several fronts to get the case so
12 that it is manageable and in the hands of the
13 judiciary in a manageable way, giving everybody
14 their process that they are due under the law.
15 Under whatever law it is.

16 So you want to extend that date on page 15
17 paragraph three point seven to November 13 --

18 MS KELLY: Yes, Judge. And we propose
19 having --

20 THE COURT: -- 2024.

21 MS KELLY: Yes. And we propose at the
22 conclusion of that conference having a status
23 conference or something with Your Honor to report on
24 whether we were successful in a resolution, and if
25 not, set dates for depositions in the courthouse and

1 evidentiary, other evidentiary or motions hearings
2 for motions we will file in the interim.

3 THE COURT: But also, are you going to file in
4 that time period the motion to lift the stay that
5 you were -- on these motions respecting assets here
6 so that they can proceed, and the motion to have an
7 adjudication that the RICO claims are not barred by
8 bankruptcy?

9 MS KELLY: Yes. I don't know that we will have
10 an adjudication on the -- whether the claims are
11 dischargeable or not.

12 THE COURT: I am not talking about this. I am
13 talking about filing by November.

14 MS KELLY: We will definitely have it filed.
15 We have the motion to lift the stay already drafted.
16 Given The Court's position here, I understand that
17 that is a very urgent matter, and we will notice it
18 as an emergency hearing so we can get an expedited
19 hearing with the bankruptcy court in Texas on that
20 issue.

21 We will also file the motion to request the
22 full participation of Mr. Tassone pursuant to the
23 settlement agreement.

24 THE COURT: When are you going to file that?

25 MS KELLY: Could we have until the end of next

1 week, please?

2 THE COURT: What is the date?

3 MS KELLY: Twenty-fourth. No. Twenty-fifth.

4 THE COURT: By October 25. All right.

5 You are going to file the 1491 motion in 17 CV
6 416 in 3:19 341. When are you going to do that?

7 MS KELLY: So the 1491 motion, we can have that
8 filed by the 25th as well, Judge. And --

9 THE COURT: That is to be filed as a new motion
10 in 3:19 CV 314; is that right?

11 MS KELLY: That's correct, Judge.

12 THE COURT: All right.

13 Is there anything else that we need to do?

14 You talked about a status conference on
15 November 13th or 14th. Let me look at that.

16 I am not here on the 13th or 14th. I will be
17 back on the 15th.

18 MS KELLY: Fifteenth works for plaintiff.

19 THE COURT: I will expect the parties and
20 counsel to be here. I am inviting Mr. Martorello
21 and his bankruptcy counsel to be here. Advising
22 them that they run the risk that decisions might be
23 made that affect their business if they don't come
24 here to be represented. That their appearance here
25 waives no rights that they have in the bankruptcy

1 proceedings or elsewhere. But they are important
2 people based upon what I have heard today in
3 figuring out a way for the litigation, and the
4 litigation involves many people many, many cases, to
5 move forward.

6 We will meet on the 15th at 10:00 a.m.

7 You said you wanted to have a conference
8 respecting the various topics, and the topics were
9 what?

10 MS KELLY: On the 15th?

11 THE COURT: You mentioned inter alia deposition
12 schedules and what else?

13 MS KELLY: That's correct, Judge.

14 If you recall, we were scheduled to take I
15 believe Mr. Martorello's deposition in the
16 courthouse, and also Ms Martorello's deposition. We
17 would also want to take her as well, Judge. We had
18 those scheduled. Regarding the transfers, if we are
19 not able to get to a resolution, we will also, we
20 also think it would be appropriate --

21 THE COURT: You don't want to take those
22 depositions on the 15th? You want to schedule the
23 depositions?

24 MS KELLY: Yes, Judge.

25 THE COURT: I suggest you have an itinerary for

1 this meeting. Get the itinerary to me by the 13th
2 of November so I understand what we are looking at
3 and can plan whatever it is that either side wishes
4 to discuss positively or negatively.

5 MS KELLY: I understand, Judge.

6 Just so I understand so we can represent to the
7 bankruptcy court your position, is that you would
8 want confirmation whether or not the bankruptcy
9 court would lift the stay prior to that time so that
10 you could freely schedule whatever you need to
11 schedule?

12 THE COURT: Yes.

13 MS KELLY: Okay.

14 THE COURT: Nothing would take place until I
15 heard the parties on the scheduling. But their
16 papers are already here.

17 MS KELLY: Right.

18 THE COURT: There were testimonies set to be
19 heard. And then the settlement occurred. And then
20 the bankruptcy unexpectedly occurred. So we need to
21 get the matter back on schedule.

22 MS KELLY: Given your familiarity --

23 THE COURT: I think it is the responsibility of
24 this Court to handle those matters in order that
25 cases pending here can move forward. I also happen

1 to think that from what I have been able to discern
2 from the bankruptcy proceedings so far that it might
3 facilitate use of the bankruptcy court.

4 MS KELLY: Yes, Judge. Plaintiffs would agree
5 that given your extensive knowledge and familiarity
6 with these issues, and the facts given the
7 seven-year history of the case so far, that is
8 probably best to be determined here.

9 THE COURT: All right.

10 Is there anything else that needs to be done
11 today by anybody?

12 MR. JACKSON: Yes. I will go first.

13 THE COURT: Yes, sir.

14 MR. JACKSON: This is Billy Jackson for Rebecca
15 Martorello again.

16 One of the conditions of the settlement
17 agreement is that the proceedings, including the
18 bankruptcy proceeding, will be stayed during the
19 pendency of the agreement. I ask that if this were
20 to be extended to November 13th and 15th that class
21 counsel not make those filings in the bankruptcy
22 proceeding or against Ms Martorello in her actions
23 here in the EDVA until after that point.

24 THE COURT: Why?

25 MR. JACKSON: It is in the agreement that class

1 counsel promised they would not.

2 THE COURT: What are you talking about? Let me
3 see what you are talking about.

4 MR. JACKSON: Certainly. This is section
5 eleven on page 36 of the settlement agreement.

6 THE COURT: 652 dash 1?

7 MR. JACKSON: Yes, Your Honor.

8 THE COURT: Just a minute. What paragraph is
9 it?

10 MR. JACKSON: It is going to be --

11 THE COURT: What page? What paragraph am I
12 talking about?

13 MR. JACKSON: Page 37. It is eleven point five
14 and and eleven point six.

15 THE COURT: Just a minute.

16 Well, I don't -- I don't understand that that
17 has anything to do with what we are talking about
18 doing here. How would that -- all we are doing is
19 asking the bankruptcy court for its view on whether
20 the matters that need to be proceeded with here
21 respecting pending matters on the transfer of assets
22 would continue and how they would be dealt with. I
23 don't understand those paragraphs to constitute an
24 agreement not to do anything. How does that -- I
25 don't understand that. How does that language work

1 that way?

2 MR. JACKSON: I interpret that to mean that an
3 assurance from both parties that we wouldn't file
4 anything, or create any work for anybody to respond
5 to on those motions or to produce those motions in
6 the first place.

7 THE COURT: Well, it doesn't say that, and
8 beyond that it has been overtaken by events. The
9 filing of the bankruptcy that Mr. Martorello filed
10 render it necessary for the things that I am talking
11 about here to get done to get done so that we can,
12 the bankruptcy that he filed that was after this
13 document, nobody knew about. So it can't -- that
14 provision, these provisions can't be in
15 contemplation of his filing the bankruptcy. I don't
16 think that applies, eleven point five or eleven
17 point six. So file them and get to work.

18 MR. JACKSON: At the very least, Your Honor, we
19 ask that class counsel hold off on filing the motion
20 against Ms Martorello until after that time.

21 THE COURT: Why? I want them here to be
22 decided. If you want time to -- I mean, what are
23 you trying to accomplish? It doesn't make any --
24 looks like it just delay. So I know that is not
25 what you have in mind, so tell me why you have this

1 problem. Is it spending money?

2 MR. JACKSON: At the very least, Your Honor,
3 the settlement agreement does that the proceedings
4 in the EDVA should be stayed during the pendency of
5 the settlement agreement proceedings.

6 THE COURT: Upon the assumption that it was
7 proceeding. And all of the assumptions upon which
8 that was operating, that stay operated has
9 dissipated into the ether by virtue of
10 Mr. Martorello's bankruptcy. And we need to make
11 sure that these proceedings may proceed
12 notwithstanding his bankruptcy. So I am not -- I am
13 going to ask them to go on and file them. I don't
14 think that eleven point five and eleven point six
15 have anything to do with the filings that need to be
16 made by virtue of Mr. Martorello's bankruptcy, which
17 has impeded the progress of this settlement. And
18 that changed circumstances necessitate that The
19 Court get the matter appropriately back on track so
20 that it can be dealt with and accord all parties the
21 rights to which they are entitled under the law.
22 Otherwise, nothing happens in the case, as I
23 understand it.

24 All right?

25 MR. JACKSON: Yes, Your Honor.

1 THE COURT: All right.

2 Anything else anybody needs?

3 MS KELLY: Judge, the only thing for plaintiffs
4 is I just wanted to represent there were eight
5 exclusions to the settlement, the first question of
6 the day --

7 THE COURT: The what?

8 MS KELLY: -- to the settlement, the first
9 question of the day was you asked how many
10 exclusions.

11 THE COURT: Opt outs.

12 MS KELLY: Yes, I am sorry. Opt outs. That is
13 ECF 674 dash 1. And the exclusions are attached to
14 the declaration. So there were eight.

15 THE COURT: The objection is what is it, ECF
16 what?

17 MS KELLY: It was 672. ECF 672 is the
18 objection.

19 THE COURT: In which case?

20 MS KELLY: In 3:19, and 3:14.

21 THE COURT: All right.

22 I think that takes care of it for now.

23 Thank you very much. We will be in recess.

24 The foregoing is a true and correct transcript.

25 GILBERT F. HALASZ, OCR
Official Court Reporter